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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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**In the Matter of Petition for Rulemaking  
of the Telecommunications Resellers  
Association to Eliminate Comity-Based  
Enforcement of Other Nations'  
Prohibitions Against the Uncompleted  
Call Signaling Configuration of  
International Call-Back Service**

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RM-9249

**REPLY OF TELKOM SA LIMITED**

**I. INTRODUCTION**

Telkom SA Limited ("Telkom"),<sup>1</sup> through undersigned counsel, hereby responds to the comments of Telegroup, Inc. ("Telegroup"), USA Global Link, Inc. ("USA Global Link"), and Ursus Telecom Corporation ("Ursus") in support of the Petition for Rulemaking, RM-9249 (the "Petition"), of the Telecommunications Resellers Association ("TRA"). Telegroup, USA Global Link, and Ursus, like TRA before them, fail to provide any basis for the Federal Communications Commission to reconsider the

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<sup>1</sup> Telkom is the leading provider of telecommunications services in South Africa. Telkom was state-owned until 1997, when 30% of its equity was sold to Thintana Communications L.L.C., 60% of which is indirectly held by SBC Communications Inc. and 40% of which is indirectly held by Telekom Malaysia Barhad.

conclusion that it reached in 1994 and again in 1995, namely, that while call-back<sup>2</sup> is permissible under U.S. law and may advance important policy goals, call-back providers must offer their services in a manner that is consistent with the laws of the countries in which they operate.

## II. ANALYSIS

### A. Telegroup, USA Global Link and Ursus Fail to Show Why Reexamining Call-Back Policy Would Not Be a Waste of Commission Resources.

The Commission formulated its call-back policy in 1994 in the *Call-Back Order*,<sup>3</sup> and reaffirmed that policy in 1995, in the *Call-Back Reconsideration Order*,<sup>4</sup> based on a well-developed record that included comments from providers of call-back services, U.S. and foreign carriers, and, in the case of the *Call-Back Reconsideration Order*, the Department of Justice and the Department of State. TRA's Petition is an attempt to relitigate this matter in which TRA and the providers of call-back services did not prevail, and is a waste of Commission resources. Telegroup, USA Global Link and Ursus, like TRA before them, can offer no justification for demanding a third bite at the apple, besides their flawed analysis of the WTO Basic Telecom Agreement.<sup>5</sup>

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<sup>2</sup> By "call-back," Telkom means, as do TRA, Telegroup, USA Global Link and Ursus, uncompleted call signaling, and not the "hot line" or "pooling" methods of providing call-back services.

<sup>3</sup> *VIA USA, Ltd Telegroup, Inc. Application for Authority Under Section 214 of the Communications Act of 1934*, 9 FCC Rcd. 2288 (1994) ("*Call-Back Order*").

<sup>4</sup> *VIA USA, Ltd Telegroup, Inc. Application for Authority Under Section 214 of the Communications Act of 1934*, 10 FCC Rcd. 9540 (1995) ("*Call-Back Reconsideration Order*").

<sup>5</sup> World Trade Organization: Agreement on Telecommunications Services (Fourth Protocol to General Agreement on Trade in Services), 36 I.L.M. 354 (1997).

**B. Telegroup, USA Global Link and Ursus Misunderstand the Effect of the WTO Basic Telecom Agreement on the Commission's Call-Back Policy.**

Telegroup, USA Global Link and Ursus, like TRA before them, fail to understand that the WTO Basic Telecom Agreement has strengthened rather than weakened the basis for the Commission's requirement that call-back providers offer their services in a manner consistent with the laws of the countries in which they operate. The Commission arrived at this requirement by weighing call-back's potential benefits against the principle of – and benefits to the United States of – international comity, and concluded that international comity was more important. As a result of the WTO Basic Telecom Agreement, the balance had tilted even more heavily toward international comity. The benefits that call-back once promised – market opening and international collection rate reductions – are now occurring under the WTO Basic Telecom Agreement without disruptive and destabilizing side effects. At the same time, international comity is more significant today in light of 69 nations, including the United States, having concurred in the transitions to open markets adopted with the WTO Basic Telecom Agreement.

**1. Telegroup.**

Telegroup complains about the pace of market liberalization adopted as part of the WTO Basic Telecom Agreement, and urges the Commission to condone illegal call-back services that might hasten such liberalization. Telegroup fails to mention that the United States, as a party to the WTO Basic Telecom Agreement, agreed with other countries' commitments to effect gradual and orderly market liberalizations that allow time for privatization, infrastructure development, and rate rebalancing. Illegal call-back service threatens such reforms and would be an end run around the international consensus represented by the WTO Basic Telecom Agreement.

## **2. USA Global Link and Ursus.**

USA Global Link and Ursus say that the Commission adopted its current call-back policy because, prior to the WTO Basic Telecom Agreement, if the Commission wanted its rules enforced in foreign countries, the Commission had to enforce other countries' rules in the United States. With the WTO Basic Telecom Agreement, there is, according to USA Global Link and Ursus, a "multilateral framework for addressing conflicts," and this "international regime for the regulation of basic telecommunications services" is committed to "pro-competitive principles and regulatory procedures." Call-back, say USA Global Link and Ursus, is consistent with these pro-competitive principles, and disputes about call-back should be addressed through the multilateral framework of the WTO Basic Agreement and not through unilateral Commission action.

USA Global Link and Ursus ignore the threat that call-back services pose to the gradual and orderly market liberalization measures that were so painstakingly negotiated and set forth in the WTO Basic Telecom Agreement and the accompanying commitments of the parties. USA Global Link and Ursus also forget that multilateral structures depend on the parties meeting all of their obligations – the United States can hardly expect the other 68 signatories of the WTO Basic Telecom Agreement to abide by its terms if the United States is condoning illegal actions that will subvert provisions of the WTO Basic Telecom Agreement that are of crucial importance to many of the parties.

### **C. The Commission Should Not Selectively Condone Illegal Call-Back Services, As Ursus Urges.**

While Ursus urges the Commission to condone all illegal call-back services, Ursus also says that, at the very least, the Commission should condone illegal call-back services in specified circumstances. The circumstances that Ursus describes, however,

provide no basis for the Commission to abandon the call-back policy that it adopted in 1994 and reaffirmed in 1995.

### **1. Commission Interpretation of WTO Basic Telecom Agreement.**

Ursus would have the Commission condone illegal call-back services in countries that have committed to allowing call-back under the WTO Basic Telecom Agreement, as interpreted by the Commission. Ursus's position is an affront against both international comity and the WTO Basic Telecom Agreement -- Ursus would have the Commission unilaterally determine what other countries committed to do under the WTO Basic Telecom Agreement, rather than look to the appropriate authorities in those countries and, in case of disagreements, to the dispute resolution mechanisms in the WTO Basic Telecom Agreement. Ursus' position also ignores other countries' legal systems as the appropriate forums to challenge their restrictions on call-back, whether on legal or policy grounds. In South Africa, for example, the South African Call Back Association and ten call-back operators have filed an application for review by the High Court of South Africa of an order of the South African Telecommunications Regulatory Authority that declared that carrying on call-back operations constituted an offense under the South African Telecommunications Act. Principles of international comity, however, dictate that the United States should follow, not second guess, such determinations.

### **2. U.S. Owned Carriers.**

Ursus would have the Commission condone illegal call-back services in countries where there is partial U.S. ownership of incumbent carriers because U.S. corporations should not be permitted to profit from "anti-competitive behavior." Ursus forgets that, in negotiating the WTO Basic Telecom Agreement, the U.S. strongly advocated eliminating

most restrictions on foreign ownership of telecommunications providers specifically to open opportunities for U.S. firms to invest, and had to overcome strenuous opposition to get most countries to make commitments allowing foreign ownership. Ursus would have the Commission punish countries that made such foreign ownership commitments (and followed through on them) by ignoring violations of their laws against call-back. And Ursus would have the Commission punish U.S. companies that made large investments in these companies. At the same time, countries that made no such commitments, or in which there is no U.S. ownership of the incumbent carrier, would have their laws against call-back enforced – a perverse result. Ursus also mischaracterizes restrictions on call-back as anti-competitive, when in fact such restrictions have helped to enable countries to commit to and begin the orderly transition to open markets.

In South Africa, for example, the government has permitted an American corporation, SBC Communications Inc., to acquire an indirect 18% interest in the leading telecommunications provider, Telkom SA Limited, consistent with South Africa's commitments under the WTO Basic Telecom Agreement. Call-back is illegal today in South Africa because of the provisions of the South African Telecommunications Act 103 of 1996. Call-back is an activity economically damaging to South Africa because it would deprive Telkom of revenues needed to meet network modernization and universal service objectives that are a necessary prelude to full competition in the telecommunications marketplace. South Africa's call-back restrictions do not cause a U.S. investor to earn illicit profits, but instead are helping to finance an orderly and gradual market liberalization that is fully consistent with South Africa's WTO commitments.

### **3. Due Process.**

Ursus would have the Commission condone illegal call-back services involving countries that did not comply with U.S. due process standards in outlawing call-back services. Ursus' proposal again would be an affront against international comity and the cooperative spirit of the WTO Basic Telecom Agreement, with the United States unilaterally sanctioning other countries that failed in its eyes to adhere to its notion of due process, countries in whose WTO commitments the United States concurred.


### **III. CONCLUSION**

Telegroup, USA Global Link and Ursus, like TRA before them, have failed to show why the Commission should devote its limited resources to examining call-back policy for the third time in less than five years. Telegroup, USA Global Link and Ursus also fail to appreciate that adoption of the WTO Basic Telecom militates toward continued enforcement of the requirement that call-back providers offer their services in a manner consistent with the laws of the countries in which they operate. The WTO Basic Telecom Agreement performs the same market-opening function that call-back services once promised – without the destabilizing effects on individual countries – and international comity concerns are more important in light of 69 countries, including the United States, having entered into the WTO Basic Telecom Agreement and agreed to

the individualized timetables for transitioning to open markets that are set forth in each country's commitment. TRA's Petition should be denied.

Respectfully submitted,

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May 21, 1998



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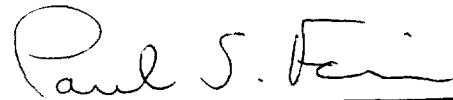
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